

AUG 05 2005

DAE
JFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

THOMAS EYHORN

Serial No.: 10/775,463

Group Art Unit: 3974

Examiner: Tammy J. Koontz

Filed: February 10, 2004

For: HEAT INSULATION FOR UNDERWATER COMPONENTS
FOR OIL AND GAS PRODUCTION

Attorney Docket No.: WAS 0618 PUS / Wa 10267-W

RENEWED PETITION UNDER 37 C.F.R. § 1.137(b)

Attention: Senior Petitions Attorney - Christina Tartera Donnell
Mail Stop Petition
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby requests reconsideration of the Dismissal of Applicant's Petition to Revive an Unintentionally Abandoned Application (copy enclosed). The application became abandoned through no fault of the Assignee, by the Assignee's attorney misinterpreting a direction to "close the file" as a request to abandon the application.

Attached is the Declaration of the undersigned attorney recapitulating the facts surrounding the unintentional abandonment and including the Exhibits in support thereof. Applicant respectfully requests reconsideration in view of this submission, and revival of the unintentionally abandoned application.

Applicant is mindful of the admonition in the MPEP §711.03(c) that "a change in circumstances that occurred subsequent to the abandonment . . . does not render "unintentional" the delay resulting from a previous deliberate decision to permit an application to be abandoned."

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

Aug. 3, 2005
Date of Deposit

William G. Conger
Name of Person Signing



Signature

However, in this case, no deliberate decision to abandon the application was made. Rather, the instruction was to close the file. The filing of the Express Abandonment was in error, was due to a misinterpretation of the client's instructions, and was unintentional.

Respectfully submitted,

THOMAS EYHORN

By: 

William G. Conger

Reg. No. 31,209

Attorney/Agent for Applicant

Date: August 3, 2005

BROOKS KUSHMAN P.C.

1000 Town Center, 22nd Floor

Southfield, MI 48075-1238

Phone: 248-358-4400; Fax: 248-358-3351

MODE = MEMORY TRANSMISSION

START=JUN-22 13:56 END=JUN-22 13:57

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-BROOKS AND KUSHMAN

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WACKER

DR. HOLGER POTTEN
CORPORATE INTELLECTUAL
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holger.potten@wacker.com

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Hans-Selbst-Platz 4, 81737 Munich, Germany

Brooks & Kushman P.C.
Law Offices
Attn: Mr. William G. Conger
1000 Town Center, 22nd Floor
Southfield, Michigan 48075
USA
Via Fax

June 22, 2004.

PML/Dr.P
cs-3060-04

U.S. Patent Application Serial No. 10/775,463
Your Ref: WAS 0618 PUS
Our Ref: Wa 10267-W

Dear Mr. Conger,

As we are no longer interested in maintaining the above-cited patent application, we kindly ask you to close your files accordingly.

We kindly ask you to acknowledge receipt of this letter.

Very truly yours,
Wacker-Chemie GmbH

ppa: Dr. Franke
Senior Vice President
General Counsel
Corporate Intellectual Property

I.V. Dr. Potten
European Patent Attorney

RECEIPT IS HEREBY ACKNOWLEDGED
by Jerry Brueger
DATE 6/22/04

Registered Office Munich, Germany
Local Court Munich HRB 3499
Executive Board:
Peter-Alexander Wacker (President)
Joachim Raunig
Rudolf Strudig
Chairman Supervisory Board:
Karl Heinz Wichter

JUN 22 2004 8:37



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Brooks & Kushman P.C.
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1000 Town Center, 22nd Floor
Southfield, Michigan 48075
USA
Via Fax

October 21, 2004

Our ref.
PML/Dr.P
tr-5236-04

U.S. Serial No. 10/775,463
THERMAL INSULATION FOR UNDERWATER COMPONENTS FOR OIL AND GAS
PRODUCTION
Your Ref.: WAS 0618 PUS
Our Case: Wa 10267-W

Dear Mr Conger,

Please be informed that we do not wish to abandon the application as written in our letter of June 22, 2004.

This application belongs to an activity, which has been sold to

Porextherm Dämmstoffe GmbH
Heisinger Straße 8
87437 Kempten
Germany.

In the matter of this application we therefore ask you to correspond with the above mentioned company in future.

But if there are any problems regarding the reinstatement of this application, please contact us immediately.

Registered Office Munich, Germany
Local Court Munich HRB 3499
Executive Board:
Peter-Alexander Wacker (President)
Joachim Rauhut
Rudolf Staudigl
Chairman Supervisory Board:
Karl Heinz Weiss

WACKER

Page 2 of 2

Very truly yours,
Wacker-Chemie GmbH


i.V. Dr. Holger Potten
European Patent Attorney



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

THOMAS EYHORN

Serial No.: 10/775,463

Group Art Unit: 3974

Examiner: Christina T. Donnell

Filed: February 10, 2004

For: HEAT INSULATION FOR UNDERWATER COMPONENTS
FOR OIL AND GAS PRODUCTION

Attorney Docket No.: WAS 0618 PUS

DECLARATION OF WILLIAM G. CONGER

Mail Stop Petition
Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, William G. Conger, do hereby declare and state as follows:

1. I am the attorney of record in the above-identified case, now abandoned, for which a Petition to Revive for unintentional abandonment has been filed.

2. The Petitions Branch has indicated that the Petition to Revive was insufficient, as it allegedly did not satisfy requirement (3) as set forth in the letter of Dismissal dated June 24, 2005:

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

3. Applicant's attorney notes that the above quoted section indicates that "The Director may require additional information. . .", and believes that the Dismissal, for which a two month period for reply is granted, is a reflection that the Director is now requiring additional information.

4. The application was filed on February 10, 2004, and at the time of the unintentional abandonment, had not been examined on the merits, nor had any Action requiring any response been received.

5. On June 22, 2004, Applicant received a telefax from Dr. Holger Potten, a European Patent Attorney for the Assignee Wacker-Chemie GmbH requesting that the files be closed. Dr. Potten did not request that the application be expressly abandoned. A copy of the telefax is attached hereto as Exhibit A.

6. Applicant's attorney, the undersigned, mistakenly interpreted the instruction to close the files as a request that the application be Expressly Abandoned rather than to close the file and not act further unless so instructed.

7. On October 21, 2004, Applicant's attorney was informed that the application was sold to another party, and that the application was not to have been abandoned. The "abandonment" referred to in the letter clearly pertains to abandonment by the Assignee's attorney by means of closing the file, and not by abandonment in the United States Patent and Trademark Office. A copy of the telefax is attached as Exhibit B.

8. It is evident from the telefax of October 21, 2004, that the Assignee intended the closing of the file to be an act which could be reversed at any time, since there was no Action requiring any response. That the Assignee believed that the application was not abandoned in the sense used by the United States Patent and Trademark Office is evident from the fact that negotiations for sale and ultimate sale of the application were premised on the application's viability. The Assignee's October 21 telefax also requested that the application be revived (reinstalled).

9. It should be evident from the above that the application became Expressly Abandoned unintentionally, due to an error on the part of the Assignee's attorney filing an Express Abandonment rather than merely closing the file as instructed.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.


William G. Conger

Dated: August 3, 2005